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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CARL RICK COLLINS, KEITH WILSON FULTON,
ANNA CARSEN, and JAMES CALDWELL FORD

Appeal 2019-001737
Application 14/682,697
Technology Center 3600

Before JOHNNY A. KUMAR, JOHN A. EVANS, and
MICHAEL T. CYGAN, *Administrative Patent Judges*.

CYGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–27, which are all of the pending claims in the application. Appeal Br. 9. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as ADP, LLC. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claimed invention generally relates to visualizing and managing on-demand payments for employees of an organization. Spec. ¶ 2.

Independent claim 1 is illustrative:

1. A method for managing scheduled payroll payments to employees, the method comprising:

identifying, by a computer system, a schedule of employer payments to an employee;

displaying, by the computer system, the schedule;

receiving, by the computer system, user input specifying a request to change the schedule of employer payments for a portion of the payments;

changing, by the computer system, the schedule of employer payments based on the request; and

distributing, by the computer system, the portion of the payments to the employee based on a changed schedule.

Appeal Br. 23 (Claims App.).

Independent claims 10 and 19 recite, respectively, a computer system and a computer program product that perform the method of claim 1.

Appeal Br. 25–26. Dependent claims 2–9, 11–18, and 20–27 each incorporate the limitations of their respective independent claims. *Id.* at 23–28.

REFERENCES

| Name | Reference | Date |
|---------------------------------|--------------------|---------------|
| Woodings et al. (Woodings) | US 2004/0267595 A1 | Dec. 30, 2004 |
| Edrington et al. (Edrington) | US 2012/0054088 A1 | Mar. 1, 2012 |
| Ruffolo et al. (Ruffolo) | US 2013/0085796 A1 | Apr. 4, 2013 |

REJECTIONS

Claims 1–27 are rejected under 35 U.S.C. § 101 as being ineligible subject matter.

Claims 1–7, 10–16, and 19–25 are rejected under 35 U.S.C. § 103 as being obvious over the combination of Edrington and Woodings.

Claims 8, 9, 17, 18, 26, and 27 are rejected under 35 U.S.C. § 103 as being obvious over the combination of Edrington, Ruffolo, and Woodings.

OPINION

A. Subject Matter Eligibility

1. Principles of Law

Patent-eligible subject matter is defined in 35 U.S.C. § 101 of the Patent Act, which recites:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

There is, however, an implicit, longstanding exception to patent-eligible subject matter in 35 U.S.C. § 101: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014). This exception precludes patenting of “the basic tools of scientific and technological work” from which all inventions spring. *Id.* at 216–17 (internal quotation marks omitted). Invention or discovery under § 101 is distinguished as being the application of such tools to an end otherwise satisfying the requirements of the patent statutes. *See Gottschalk v. Benson*, 409 U.S. 63, 67 (1972).

The Supreme Court has established a framework for this eligibility determination. Where a claim is directed towards a law of nature, natural phenomena, or abstract idea, the elements of the claim as a whole must ensure that the claim, in practice, amounts to significantly more than a patent on the law of nature, natural phenomena, or abstract idea itself. *Alice Corp.*, 573 U.S. at 217–18. In applying this eligibility analysis, our reviewing court has stated “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen[,] . . . the classic common law methodology for creating law when a single governing definitional context is not available.” *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citation omitted).

To address the growing body of precedent, the USPTO recently published revised examination guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 50 (Jan. 7, 2019) (hereinafter 2019 Guidance). The 2019 Guidance seeks to improve the clarity of the subject matter eligibility analysis and to improve consistency of this analysis across the USPTO. *Id.*

Under the 2019 Guidance, we first look to whether the claim is directed to a judicial exception because:

- (1) the claim recites a law of nature, natural phenomenon, or abstract idea, the last of which includes certain groupings, identified as mathematical concepts, certain methods of organizing human activity and mental processes; and
- (2) the claim as a whole fails to recite additional elements that integrate the judicial exception into a practical application (*see*

MANUAL OF PATENT EXAMINATION PROCEDURE (hereinafter “MPEP”) §§ 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or, instead, simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See 2019 Guidance, *passim*.

2. Analysis

We have reviewed the Examiner’s subject matter eligibility rejection (Final Act. 2–3, Ans. 4–5) in light of Appellant’s contentions that the Examiner has erred (Appeal Br. 9–12, Reply Br. 2–3). We are not persuaded by Appellant’s contention of Examiner error in rejecting claims 1–27 under 35 U.S.C. § 101. We begin with claim 1.

a) “Recites an Abstract Idea”

The Examiner has determined claim 1 to be directed to “managing and displaying payroll schedules and other related administrative tasks.”

Ans. 4. We understand the corresponding limitations to be:

identifying . . . a schedule of employer payments to an employee; displaying, by the computer system, the schedule; receiving . . . user input specifying a request to change the schedule of employer payments for a portion of the payments; changing . . . the schedule of employer payments based on the request.

The Examiner has found these limitations to be a performance of a financial transaction, similar to concepts previously identified by the courts as abstract, such as in *buySAFE, Inc. v. Google, Inc. Id.* (citing *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014)).

The USPTO's 2019 Guidance states that the abstract idea exception includes certain methods of organizing human activity "when recited as such in a claim limitation(s) (that is when recited on their own or per se)." 2019 Guidance, 84 Fed. Reg. at 52. In particular, Updated Guidance issued by the USPTO in October 2019 characterizes those certain methods of organizing human activity as including commercial or legal interactions such as contracts, legal obligations, and business relations. October 2019 Update: Subject Matter Eligibility 4, accessible at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf.

We agree with the Examiner that the scheduling of employer payments to an employee is a type of business relation, contract, or legal obligation, and, as such, is a method of organizing human activity that is characterized as an abstract idea. Such a determination is consistent with prior Court determinations finding abstract ideas in claims reciting financial transactions. *Alice Corp.; Bilski v. Kappos*, 561 U.S. 593 (2010). Under our controlling guidance, the above-identified limitations are an abstract idea under Step 2A, Prong 1 of the 2019 Guidance.

b) "Directed to an Abstract Idea"

Having determined that claim 1 recites an abstract idea, we next determine, under Step 2A, Prong 2 of the 2019 Guidance, whether the claims are directed to that abstract idea, or whether the claims integrate the abstract idea into a practical application of that abstract idea. 84 Fed. Reg. at 54.

The Examiner finds claim 1 to have an element additional to those limitations reciting an abstract idea; namely, a generically recited computer system and “distributing, by the computer system, the portion of the payments to the employee based on a changed schedule.” Final Act. 3; Ans. 4. The Examiner determines that the involvement of the computer system does not result in an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment. Final Act. 3. The Examiner further finds the step of distributing payments to be similar to a step of providing transaction that was found ineligible in *Alice Corp.* Ans. 5.

Appellant disagrees, arguing that claim 1’s step of distributing payments provides a concrete implementation that is not merely a mental process. Appeal Br. 11; Reply Br. 3. Appellant cites to *Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057 (Fed. Cir. 2011) and *Vanda Pharm. Inc. v. West-Ward Pharm. Int’l Ltd.*, 887 F.3d 1117 (Fed. Cir. 2018) as showing additional steps of, respectively, immunization and carrying out a dosage regimen. Appeal Br. 11. Appellant argues that claim 1’s additional step of distributing payments is of the same character as the additional immunization and dosage regimen steps found to provide eligibility in *Classen* and *Vanda*. Appeal Br. 11; Reply Br. 3.

The 2019 Guidance provides considerations, drawn from prior court precedent, to determine whether an additional element or combination of elements integrates a recited abstract idea into a practical application. 84 Fed. Reg. at 55. One such consideration is whether the additional element(s) reflect an improvement in the functioning of a computer or another

technology or technical field. *Id.* Considerations indicating a lack of a practical application of the recited abstract idea include additional element(s) that amount to an instruction to implement the abstract idea on a computer or to otherwise instruct to “apply [the abstract idea].” *Id.* Other such considerations indicating a lack of a practical application include additional elements that add insignificant extra-solution activity to the abstract idea, or that merely link the abstract idea to a particular technological environment. *Id.*

Under this framework, we analyze the additional elements in claim 1, which, as discussed *supra*, are a computer system and “distributing, by the computer system, the portion of the payments to the employee based on a changed schedule.” We agree with the Examiner that the performance of the claimed functions on a generically claimed computer system, including identifying a schedule of payments, receiving user input, and changing a schedule, amounts to no more than an instruction to implement the above-identified abstract idea on a computer. We further determine that the final step of distributing payments amounts to no more than an instruction to “apply it;” i.e., to perform a financial transaction according to the abstract idea. We additionally agree with the Examiner that the step of distributing payments is similar to *Alice Corp.*’s step of issuing instructions to carry out the permitted transactions, which, along with the other steps, was found to amount to nothing significantly more than an instruction to apply the abstract idea using some unspecified, generic computer. *Alice Corp.*, 573 U.S. at 225–26; *see also Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341–42 (Fed. Cir. 2017) (claims found directed to “collecting, displaying, and manipulating data” and additional step of

modifying an XML document was equivalent to adding the words “apply it”).

We have considered Appellant’s arguments based upon *Classen* and *Vanda*. USPTO Guidance recognizes that “an additional element that applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition” may indicate that a judicial exception has been integrated into a practical application. 2019 Guidance, 84 Fed. Reg. at 55 (citing, *inter alia*, *Classen* and *Vanda*). However, claim 1 does not effect a particular treatment or prophylaxis for a disease or medical condition, and accordingly, the consideration applied in *Classen* and *Vanda* does not apply here.

In view of the considerations that reflect that the claim merely includes instructions to implement an abstract idea on a computer, based upon our controlling guidance and court precedent, we determine that claim 1 is directed towards the recited abstract idea, and that the recited abstract idea is not integrated into a practical application of that idea.

c) “Significantly More Than an Abstract Idea”

The Examiner has determined that the additional elements of the computer system, and its claimed functions including distributing payments, do not amount to significantly more than the abstract idea when considered both individually and as a combination. The Examiner finds they amount to no more than a generic computer performing generic computer functions that would be routine, conventional and well-understood to one of ordinary skill in the computer art. Final Act. 3 (citing the “well-understood, routine[,] and conventional activities” referenced by the USPTO’s July 2015 Update of the Interim Guidance of Patent Subject Matter Eligibility).

We agree with the Examiner's finding, which has not been contested specifically by the Appellant. The Specification supports the Examiner's finding that the computer system is claimed generically. *See, e.g.*, Spec. ¶¶ 28, 38–39 (describing various types of software and hardware usable for the claimed invention).

Furthermore, the presence of a generic computer performing generic computer functions, such as calculation and transmission of data, is not enough to transform an abstract idea into a patent-eligible invention. *Alice Corp.*, 573 U.S. at 225–26. The performance of the claimed functions on a generically claimed computer system, including identifying a schedule of payments, receiving user input, and changing a schedule, amounts to no more than well-understood, routine, conventional activities. *See Alice Corp.*, 573 U.S. at 225 (finding the computer functions of creating records, obtaining balances, adjusting records by entering only certain transactions, and issuing instructions to carry out permitted transactions at the end of the day rather than at differently scheduled times, to be well-understood, routine, conventional activities). Under our governing case law, this is not enough to show that the claimed computer functions cause claim 1 to be significantly more than the identified abstract idea. Accordingly, we are not persuaded by Appellant's argument.

In view of the foregoing, under the 2019 Guidance, informed by our governing case law concerning 35 U.S.C. § 101, Appellant has not shown the Examiner erred in concluding claim 1 is directed to a judicial exception, i.e., an abstract idea, without significantly more, and thus is patent-ineligible under § 101. We therefore sustain the Examiner's rejection of claim 1. Claims 2–27 have not been argued separately, and therefore fall with claim

1. 37 C.F.R. § 41.37(c)(1)(iv). Accordingly, we therefore sustain the Examiner's rejection of claims 1–27.

B. Obviousness

We have reviewed the Examiner's obviousness rejection (Final Act. 4–13, Ans. 6–9) in light of Appellant's contentions that the Examiner has erred (Appeal Br. 12–22, Reply Br. 3–4). We are not persuaded by Appellant's contention of Examiner error in rejecting claims 1–27 under 35 U.S.C. § 103. We begin with claim 1. The Examiner has found Edrington to teach a computerized method of offering a payday loan in which a portion of an employee's wage is paid to the employee in advance of a regularly scheduled payday, wherein the user may request to change the schedule of employer payments for apportion of the payments. Final Act. 4 (citing Edrington ¶¶ 22, 76, 80, 93, 96). The Examiner finds the payday loan is "offered by the employer," e.g., as an employee benefit. Ans. 6 (citing Edrington ¶ 22). In response to the user's request, the schedule is changed, and the changed schedule is used to distribute payments to the employee. Final Act. 4–5 (citing Edrington ¶¶ 22, 76, 80, 93, 96). The Examiner relies on Woodings for the remaining limitation of displaying a schedule of payments to an employee. Final Act. 5 (citing Woodings ¶ 56).

Appellant argues that the combination of references, and specifically Edrington, does not teach or suggest the claimed limitations of "receiving, by the computer system, user input specifying a request to change the schedule of employer payments for a portion of the payments" and "changing, by the computer system, the schedule of employer payments based on the request." Appeal Br. 13.

Specifically, Appellant argues that in Edrington, the lender, the borrower's employer, provides the loan. *Id.* at 14. Appellant thus concludes that Edrington does not teach or suggest "employer payments." *Id.* at 15 (emphasis omitted). Further, Appellant argues that in Edrington, the employer pays the employee only at the regularly scheduled payday, which does not change. *Id.* at 15–16. Appellant thus concludes that Edrington does not teach or suggest "changing . . . the schedule of employer payments." *Id.* Appellant further contends that the Examiner's characterization of a payday loan is improper, and presents arguments based upon the Appellant's construction of "payday loan." Appeal Br. 13–14, 17.

With respect to Appellant's arguments based upon the construction of a "payday loan," we find these arguments unpersuasive because the term "payday loan" does not appear in the claims. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (arguments not based upon limitations appearing in the claims are immaterial).

Furthermore, we are not persuaded by Appellant's argument that Edrington does not teach the employer providing the loan, thus altering the schedule of employer payments. While Edrington discusses the loan being made by the lender, Edrington further states, "the employer and the lender may, in fact, be the same entity." Edrington ¶ 97. Accordingly, we are not persuaded by Appellant that the Examiner has erred in finding claim 1 to be obvious over Edrington and Woodings.

Claims 2–7, 10–16, and 19–25 are rejected under the same grounds of rejection as claim 1. Claims 4, 5, 7, 10, 13, 14, 16, 19, 22, 23, and 25 have not been argued separately, and therefore fall with claim 1. Claims 2, 11, and 20 are argued separately, but on the same reasoning (that the schedule of

employer payments has not changed) that we have determined to be unpersuasive for claim 1. Accordingly, we therefore sustain the Examiner's rejection of claims 1, 2, 4, 5, 7, 10, 11, 13, 14, 16, 19, 20, 22, 23, and 25.

Claims 3, 12, and 21 are argued to be non-obvious because the payments are not shown to be paid from accrued compensation of the employee. Appeal Br. 18. Appellant argues, "accrued compensation is compensation earned by employees, but not yet paid out as disbursements." *Id.* Appellant argues that Edrington's payday loan instead provides funds from a separate checking account, which is eventually paid back to the lender from the employee's future earnings. *Id.* The Examiner finds that Edrington teaches the employees are paid from accrued compensation because Edrington states, "an employee 320 provides work or services for and on behalf of an employer 310. In return, employer 310 provides a salary to employee 320." Ans. 7; Final Act. 3 (citing Edrington ¶¶ 22, 76, 80, 93, 96).

To the extent that Appellant's arguments are based upon the construction of a "payday loan," we find these arguments unpersuasive because the term "payday loan" does not appear in the claims. We further find the Examiner's finding of accrued compensation supported by the Examiner's cited section of Edrington, which provides that the amount available to the employee may be based upon past employee hours. Edrington ¶ 96. Edrington further clarifies that the exact amount to be loaned may be based upon the "total number of hours logged during the current pay period when the loan is requested." *Id.* ¶ 86. Accordingly, we sustain the Examiner's rejection of claims 3, 12, and 21.

Claims 6, 15, and 24 are argued to be non-obvious because Edrington does not disclose determining whether to change the schedule based upon factors including employee performance and employee level. Appeal Br. 19. Appellant argues that Edrington only determines the employee's credit worthiness based upon those factors. *Id.* The Examiner finds that Edrington teaches one or more of the claimed set of factors. Final Act. 6 (citing Edrington ¶¶ 22, 73, 80, 83, 85, 93). The Examiner further finds that the factors such as employee performance and employee level are used in Edrington for "the ultimate basis for the eligibility of the payday loan." Ans. 7.

Claim 6 sets forth the following group of factors used to determine whether to change the schedule: an employee performance for an employer, an employee level within the employer, an amount of funds requested, a purpose of the funds requested, an accrued compensation, and a funds availability determination. To the extent that Appellant's arguments are based upon the construction of a "payday loan," we find these arguments unpersuasive because the term "payday loan" does not appear in the claims. The Examiner's finding that Edrington teaches or suggests determining eligibility based on factors such as employee performance and employee level is supported by the Examiner's cited sections of Edrington, which provide that the determination of whether to provide funds to the employee may be based upon factors such as the past history of promotions for the employee. Edrington ¶ 73. Accordingly, we sustain the Examiner's rejection of claims 6, 15, and 24.

Claims 8, 9, 17, 18, 26, and 27 are rejected as being unpatentable over Edrington, Woodings, and Ruffolo. Claim 8 recites the further limitation of

collateral to secure an anticipated compensation (set forth in claim 7), where “the collateral comprises at least one accrued vacation day of the employee, [and] responsive to changing the schedule of employer payments, deducting, by the computer system, the at least one accrued vacation days.” The Examiner has relied upon Ruffolo for these additional limitations. Final Act. 12.

Appellant argues that one would not combine Ruffolo’s use of paid time off as collateral to secure anticipated compensation with Edrington’s payday loan system, because the lender in Edrington would not find paid time off a useful form of collateral. Appeal Br. 21. Appellant here relies upon the same arguments against the rejection of these claims as provided against the rejection of claim 1; i.e., that the lender is a separate entity from the employer. Because we have found those arguments unpersuasive, we sustain the Examiner’s rejection of claims 8, 9, 17, 18, 26, and 27.

CONCLUSION

For the above-described reasons, we affirm the Examiner’s rejection of claims 1–27 as lacking subject matter eligibility under 35 U.S.C. § 101 and as being obvious over the applied references under 35 U.S.C. § 103.

DECISION SUMMARY

In summary:

| Claims Rejected | 35 U.S.C. § | References/Grounds | Affirmed | Reversed |
|------------------------|--------------------|---------------------------|-------------------|-----------------|
| 1–27 | 101 | Eligibility | 1–27 | |
| 1–7, 10–16, 19–25 | 103 | Edrington, Woodings | 1–7, 10–16, 19–25 | |

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| | | | | |
|----------------------------|-----|---------------------------------|-------------------------|--|
| 8, 9, 17, 18, 26, 27 | 103 | Edrington, Woodings, Ruffolo | 8, 9, 17, 18, 26, 27 | |
| Overall Outcome | | | 1-27 | |

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED